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APR 22 2011

Attorney Docket No.: ATOMIC-1

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

Patentee: Dean R. Garraffa)
Patent No.: 5,678,541)
Issued: October 21, 1997)
For: IMPROVED BREATHING REGULATOR)
APPARATUS HAVING AUTOMATIC)
FLOW CONTROL)

2011 APR 26 PM 4:40

USPTO
RECEIPTS ACCOUNTING
DIVISION**TRANSMITTAL OF REQUEST FOR RECONSIDERATION OF A
PETITION TO REVIVE A PATENT****MAIL STOP: PETITIONS**

Attn: Charles Steven Brantley
Senior Petitions Attorney
Commissioner for Patents
U.S. Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Enclosed herein is this Request For Reconsideration of a Petition under Rule 1.378(b) to revive the above-captioned patent by delayed acceptance of previously unpaid maintenance fees. The Request is supported by supplemental declarations of the undersigned, Leonard Tachner, counsel for the patentee, the office manager of counsel's office, Ms. Janis Foreman and physician, Dr. Samuel Albert who is a board certified psychiatrist.

Based upon the foregoing as more thoroughly detailed in the enclosed declarations, it is earnestly believed that the revival of the subject patent based upon entirely unforeseen circumstances that were truly "unavoidable", justifies

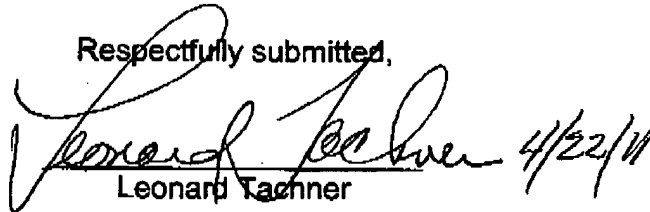
04/27/2011 DALLEN 00000007 060930 5678541

01 FC:1599 2055.00 DA
02 FC:1462 400.00 DA

reconsideration and granting of the pending petition and such is respectfully solicited.

A fee of \$2,455.00 (for the third annuity of \$2,055.00 and \$400.00 for the requested reconsideration) should be deducted from Deposit Account No. 06-0930.

Respectfully submitted,


Leonard Tachner

Attachments:

1. Additional Declaration of Leonard Tachner (3 pages)
2. Declaration of Samuel H. Albert, M.D. (2 pages)
3. Additional Declaration of Janis Foreman (3 pages)

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USPTO
RECEIPTS/ACCOUNTING
DIVISION
2011 APR 26 PM 4:40**ADDITIONAL DECLARATION OF LEONARD TACHNER****MAIL STOP: PETITIONS**

Attn: Charles Steven Brantley
Senior Petitions Attorney
Commissioner for Patents
U.S. Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

I, Leonard Tachner, do hereby declare as follows:

1. I submit this declaration as an addition to my prior declaration submitted with the subject petition. This statement is part of the evidence I am filing in support of a request for reconsideration.

2. When Ms. Foreman told me in 2008 in regard to U.S. Patent No. 6, 205,885 that the client told her that they would pay their own maintenance fees, at first it didn't seem suspicious because the client usually wrote most or all of the specification of their patent applications in order to reduce their fees. They left the claims to me to write. Only when the client disputed Ms. Foreman's statement did I begin to wonder whether Ms. Foreman was mistaken. However, I still accepted her assertion that she believed the client had made that statement

because up to then (by 2008 she had worked for me for 30 years) I had no reason to doubt her reliability. Only in late 2010 when she asserted that other clients (ATOMIC and CSUF) had also taken on the responsibility to pay their own maintenance fees, did I realize that I could no longer trust her because there was evidently something seriously wrong with Ms. Foreman. That is when I decided that I needed to have her see Dr. Albert.

3. Over the 33 years that I have been in my own practice, I have filed applications that issued into roughly 600 U.S. patents for my clients. In a small number of these applications and patents, it has been necessary to file a petition to revive due to a delayed response to an Office Action, a late issue fee payment and occasionally a late maintenance fee. Some of these petitions were necessary because of failures of clients to communicate in a timely manner. Up to the recent events; a few such petitions were made necessary by innocent clerical errors of my staff. However, to the best of my recollection, every one of those petitions to revive an application or to accept a late maintenance fee filed by my firm, had ultimately been granted. It would be impossible for us to know the precise numbers of such petitions, because once resolved, we do not retain any data summarizing such events. Moreover, many of such files have since been transferred to other firms or otherwise disposed of.

4. I now better understand the specific behavior that was Ms. Foreman's issue with meeting office deadlines primarily for paying maintenance fees to the U.S. Patent & Trademark Office. She would entirely overlook a payment deadline. Then rather than inform me in a timely manner so that I could remedy the delay, she would "cover up" her omission by alleging that the corresponding client had told her in a phone call or face to face discussion that they would pay such fees themselves. By way of example, here enclosed is a copy of a docket sheet entry apparently made by Ms. Foreman for this particular patent, showing that the client would pay their own maintenance fee. Only when

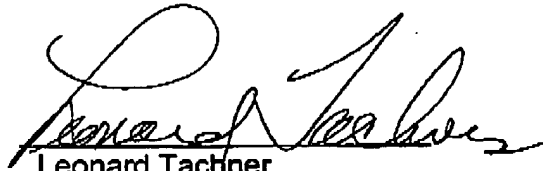
I began to see this type of entry more than once did I begin to understand that I had a serious problem.

5. I believe that the heavy workload I had assigned to Ms. Foreman over the past years has contributed to her aberrant behavior. However, I believe that her actions went beyond merely normal stress and anxiety. Based on my discussions with Dr. Albert, I now recognize that Ms. Foreman had for several years since as early as 2005 and as recently as four months ago, been ill and unable to cope with her responsibilities. I also believe that her illness was a direct cause of the firm's failure to act in a timely manner in behalf of the client in this matter.

6. I regard Ms. Foreman as more than just my employee. After more than three decades of a close working relationship, Ms. Foreman is more like a member of my family. I believe that is the reason that I did not recognize her problems earlier. She will continue to see Dr. Albert at my expense. In the meantime I will transfer time-based responsibilities from Ms. Foreman to another employee.

Pursuant to the terms of 28 U.S.C. §1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true. The declaration made herein are made with the knowledge that willful false statements and the like are punishable by fine, imprisonment, or both under 18 U.S.C. §1001 and may jeopardize the validity of the above-captioned patent.

Dated: 4/22/11


Leonard Tachner
Attorney for the Petitioner
Registration No. 26,344

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APR 22 2011

LAW OFFICES OF LEONARD TACHNER

REGISTERED PATENT ATTORNEY

3990 WESTERLY PLACE

SUITE 295

NEWPORT BEACH, CALIFORNIA 92660

(714) 752-8525

ISSUED

INVENTOR

DEAN R. GARAFFA

SERIAL NO.

08/616,223

FILED

3-15-96

TITLE

Improved Breathing Regulator Apparatus
Having Automatic Flow Control

ASSIGNEE

ASSIGNMENT RECORDED

REEL

FRAME

OFFICE ACTIONS

AMENDMENTS

6-18-97 Issue Fees + Drugs.

6-18-97 pd a drugs.

4-21-2001 First Annuity

10-22-01 pd w/annuity ✓

4-21-2005 Second Annuity

client will pay fees

4-21-2009 Third Annuity

CLIENT & TITLE
DIVISION OF
CONTINUATION IN PART OF

CANADIAN

INVENTOR

Atomic-1
GARAFFA, DEAN R.

OTHER FOREIGN

SERIAL NO.

08/616,223

ALLOWED

FINAL FEE PAID

PATENT NO.

5,678,541

DATE

October 21, 1997

ISSUED

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Patent No.: 5,678,541)
Issued: October 21, 1997)
For: IMPROVED BREATHING REGULATOR)
APPARATUS HAVING AUTOMATIC)
FLOW CONTROL)

ADDITIONAL DECLARATION OF JANIS FOREMAN

MAIL STOP: PETITIONS

Attn: Charles Steven Brantley
Senior Petitions Attorney
Commissioner for Patents
U.S. Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

I, Janis Foreman, do hereby declare as follows:

1. This declaration is a supplement to my prior declaration submitted in regard to a petition to accept an unavoidably delayed payment of the maintenance fee for the above-identified patent.

2. Over the past few months I have, as a result of discussions with and medical treatment from Dr. Samuel Albert, begun to understand that over the last five or six years I have been ill and unable to function normally and rationally in my employment as Office Manager at the Tachner Law Firm. My mindset was more attuned to survival than to properly carrying out my duties.

3. In regard to the subject patent in particular, my duty was to communicate in a timely manner with the client who is the patentee of the subject patent, to ascertain whether that client wished to have our firm pay the maintenance fee that was required in order to retain the patent. Normally, I would have sent a letter or an email to the client about 45 days before the due date for payment of the maintenance fee. Then, if I receive a positive response, I would have prepared and mailed or emailed a statement to the client so that payment from the client would be received in time to forward the payment to the U.S. Patent & Trademark Office before the due date.

4. It is my current recollection that what I did instead was to recognize that a maintenance fee was coming due for this patent, but continually put it off as something that I could attend to in due course, since I had more urgent things to do before I could get to that matter. Then I would rationalize that I could rely on a six-month surcharge period if needed and continue to put off communicating with the client. Eventually, I ran out of time, but it would occur to me that this client had wanted to pay its own maintenance fees and I would simply make such an entry in the corresponding docket sheet.

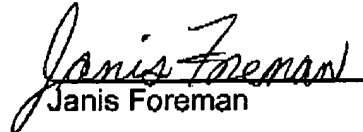
5. There was no logic or rational explanation for my behavior. I simply felt hopelessly overwhelmed and this was a way for me to handle it. I had no animosity toward the client or toward the law firm. It was just my way of coping with what I perceived to be an impossible situation without admitting to Mr. Tachner that I could no longer handle all of my usual responsibilities.

Pursuant to the terms of 28 U.S.C. §1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true. The declaration made herein are made with the knowledge that willful false statements and the like are punishable by fine, imprisonment, or

both under 18 U.S.C. §1001 and may jeopardize the validity of the above-captioned patent.

Dated: _____

4-22-11


Janis Foreman

Samuel H. Albert, M.D., Inc.
Diplomate
American Board of Psychiatry & Neurology

I, Dr. Samuel Albert, do hereby declare as follows:

1. This declaration supplements my prior statement submitted previously in regard to this matter.
2. Based upon my interviews with Ms. Janice P. Foreman, and Mr. Leonard Tachner, it is evident that her problems at her employment stemmed from a significant increase in her workload and responsibilities that occurred at about the beginning of 2002 when another law firm went out of business and several hundred files were transferred to the Tachner firm. Evidently, she was able to handle the sudden workload increase for a period of two to three years. However, beginning in late 2004, early 2005 she started falling behind and could no longer keep current.
3. In retrospect she now realizes that within a few months thereafter she started a pattern of behavior which she now recognizes as irrational. Such behavior for example included making up false excuses for failing to take required actions such as contacting clients and responding to Mr. Tachner's questions with answers that may have had no factual basis, but which she believed would satisfy his inquiry. In my opinion, it was during this period beginning in mid-2005 when Ms. Foreman went through a transition from being merely over-worked and highly stressed to being clinically ill.
4. It appears that the extent of her illness varied depending upon her level of stress and anxiety, but that it didn't fully abate until the early months of 2011. The principal symptom of this illness was her inability to separate real events from imagined ones. From time to time during this period, she would let her behavior and her actions be dictated by what she perceived to have previously occurred as opposed to events that had actually taken place.
5. In my opinion therefore, between mid-2005 and late 2010, and based upon her prior reliable behavior in regard to her duties at the Tachner firm, Ms. Foreman's failure to take proper actions were due to a psychosis that

manifested in her inability to distinguish real events from imagined ones. This condition was of such a degree, that she could not function normally and if she were to be questioned or challenged in regard to her behavior, that would raise her stress level and exacerbate her condition. I have advised Mr. Tachner and Ms. Foreman that it would be my recommendation that Ms. Foreman enter treatment on a regular basis so that I can monitor her progress and be sure that there is no regression.

Pursuant to the terms of 28 U.S.C. §1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true. The declaration made herein are made with the knowledge that willful false statements and the like are punishable by fine, imprisonment, or both under 18 U.S.C. §1001 and may jeopardize the validity of the above-captioned patent.

Dated: _____

April 11 2011 Samuel Albert MD

Dr. Samuel Albert